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Via Electronic Case Filing Only

September 18, 2020

To: Hon. Denis R. Hurley, USDJ
United States District Court
Eastern District of New York

Re D.W.M. et al. v. St. Mary School, et al 2:18-cv-03099 DRH-AKT

Dear Honorable Judge Hurley:

I write on behalf of the Plaintiffs, the Moore family, and oppose attorney Mitev's application on behalf of the infant Defendant L.M.

Attorney Mitev claims a racial death threat, images of Ku Klux Klan, Nooses, Hitler, etc., and the use of the racial slur, "Nigger," are just "bad-taste racially tinged images," (D.E. 104) and seeks summary judgment effectively excusing these threatening hate messages, death threats, and those who sent and distributed them.

Plaintiffs respectfully request that you reject counsel's application and strike his request from the record, together with all other relief that this Honorable Court deems just and proper.

"DISTURBING RACIAL ATTACK," NOT IMAGES IN BAD TASTE

Your Honor already entertained a dispositive motion from all Defendants after the May, 2018 filing of this case and found that this was a "Disturbing Racial Attack," and "[t]he pictures targeted the student's race and referenced the KKK, Nazis and suicide, ..." Jane Wester, *Long Island Federal Judge Says Parents May Sue School, Classmates Over Alleged 'Disturbing Racial Attack'*, *New York Law Journal* (September 17, 2019), <https://bit.ly/2W3wxts>.

From emojis to gun gestures, school administrators know that images can convey physical threats and the images in this case certainly conveyed threats of physical harm. In *Virginia v. Black*, 538 U.S. 343 (2003), Justice Clarence Thomas stated in dissent, "cross burning subjects its targets...to extreme emotional distress, and is virtually never viewed merely as 'unwanted communication,' but rather, as a physical threat." Mr. Justice Thomas reminds us that every African American knows that their life is being threatened because they are black immediately upon seeing images of white-sheeted Ku Klux Klan members, Adolph Hitler and a Noose.

Without citation to the record, counsel for L.M. implies that for a racial attack to be actionable, one needs a conversation with the Ku Klux Klan member before racist

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threats are beyond decency. As a reminder, attached are the images that Defendant L.M., a white classmate sent to D.W.M., a black/African American fellow student in a Roman Catholic elementary school. Counsel for L.M. tries to excuse these racial attacks because “they never met him, they never spoke to him, they never even knew who he was...” D.E. 104. This ignores the problem which has plagued this this country since it was founded: **The entire Moore family was targeted with death threats and called “Nigger” because of the color of their skin and not the quality of their character.**

This was not an “exchange” (D.E. 104), this was a “Racially Disturbing Attack” (D.E. 79). To close the door to the Courthouse and deny any legal recourse to the Moore family opens the door to the streets where outraged citizens are screaming “no justice no peace.” The Moore family received no consideration from the Suffolk County Police Department, the Suffolk County District Attorney’s Office, and the United States Department of Justice, Office of Civil Rights.

That attorney Mitev feels entitled to argue that his client who made graphic race-based death threats to the Plaintiffs, calling D.W.M. a “Nigger”, can be ignored, excused, and free from liability is a profound example of the greater problem—whether our legal system can assure equal justice under the law to all men, women, and children regardless of their race and economic status.

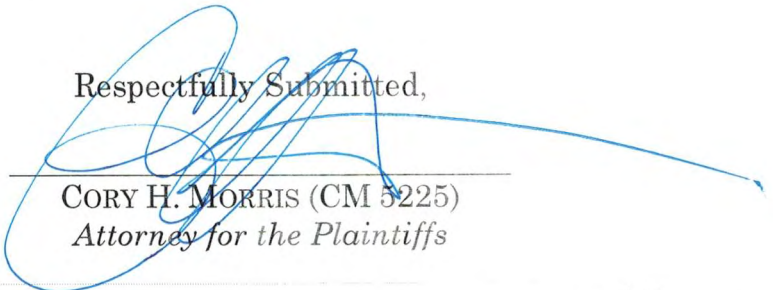
The Moore Family should not be denied a Jury Trial

Schools have gone from in person to online learning for the foreseeable future. We now live in an age where Ku Klux Klan members no longer need wood, matches and gasoline to state their message of hate in front of someone’s home. Now all they have to do is click “send” and spread it throughout cyberspace. Dana Goldstein, Adam Popescu and Nikole Hannah-Jones, *As School Moves Online, Many Students Stay Logged Out*, NY Times (April 6, 2020), <https://nyti.ms/2KTWtkG>.

In the age of COVID-19, it seems that school-age children will primarily interact online and on the internet. To deny the Plaintiffs a trial by jury on the merits, this Honorable Court would be sending an unequivocal message that there is absolutely no redress for the wrongdoing and injustice which are filling our streets with protesters and challenging our very system of representative democratic government.

Should Your Honor deny the Moore Family, and other minority families so unfortunate as to be similarly situated, the opportunity to seek redress for Civil Rights violations within our civil justice system, there is no hope for students who are victims of racist assaults by cyberbullies on the internet.

Respectfully Submitted,



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Attorney for the Plaintiffs